

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

RICKY VINCENT PENDLETON,

Plaintiff

v.

Case No. 2:22-cv-00178

BETSY JIVIDEN Commissioner, *et al.*,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiff's Motion for Entry of Default Judgment against Defendant Donnie Ames [ECF No. 22]. By Standing Order, this matter is referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). For reasons appearing to the Court, it is hereby **ORDERED** that the referral of this motion to the Magistrate Judge is **WITHDRAWN**. The undersigned will proceed to rule on the motion.

On July 1, 2022, Plaintiff filed a Motion for Entry of Default Judgment against Defendant Donnie Ames in which he contends that Ames failed to timely respond to the complaint following service of process. [ECF No. 22]. Plaintiff's motion presumes that Ames was served with process on May 18, 2022, the same date that Defendants Jividen and Rider were served, and further asserts that Ames did not file a responsive

pleading or motion on June 8, 2022 when the other Defendants filed their motion to dismiss. Consequently, Plaintiff seeks a default judgment against Ames.

Rule 55(a) requires that default be entered by the Clerk when “a party against whom a judgment for affirmative relief is sought” has “failed to plead or otherwise defend and that failure is shown by affidavit or otherwise” Fed. R. Civ. P. 55(a). Furthermore, “Rule [55(b)] of the Federal Rules of Civil Procedure authorizes the entry of a default judgment when a defendant fails ‘to plead or otherwise defend’ in accordance with the Rules.” *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982); *see also* Fed. R. Civ. P. 55(b).

However, as noted in Defendant Ames’ response to Plaintiff’s motion, Ames was not successfully served with process until June 15, 2022. [ECF No. 26 at 2; ECF No. 19]. Accordingly, his responsive pleading was not due until July 6, 2022. [*Id.*] On June 23, 2022, Ames joined in the motion to dismiss filed by the other defendants. [ECF No. 20]. Thus, he fulfilled his duty to timely respond to the complaint and there is no basis for a default judgment against him. Accordingly, it is hereby **ORDERED** that Plaintiff’s Motion for Entry of Default Judgment against Defendant Donnie Ames [ECF No. 22] is **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: March 14, 2023


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE